

1 Harry A. Zinn (SBN 116397)  
2 [hzinn@yzblaw.com](mailto:hzinn@yzblaw.com)  
3 Lester F. Aponte (SBN 143692)  
4 [laponte@yzblaw.com](mailto:laponte@yzblaw.com)  
5 YOUNG, ZINN & BATE LLP  
6 888 South Figueroa Street, Fifteenth Floor  
7 Los Angeles, California 90017  
8 Telephone: (213) 362-1860  
9 Facsimile: (213) 362-1861

10 Attorneys for Defendant  
11 CREATE NEW TECHNOLOGY (HK) CO. LTD.

12 UNITED STATES DISTRICT COURT  
13 CENTRAL DISTRICT OF CALIFORNIA  
14 WESTERN DIVISION

15 CHINA CENTRAL TELEVISION, A  
16 China company; ET AL.,

17 Plaintiffs,

18 vs.

19 CREATE NEW TECHNOLOGY  
20 (HK) LIMITED, a Hong Kong  
21 Company, ET AL.,

22 Defendants.

Case No. CV 15-1869 MMM (AJWx)

Assigned for all purposes to:  
Honorable Margaret M. Morrow

MEMORANDUM OF POINTS AND  
AUTHORITIES IN SUPPORT OF  
MOTION TO WITHDRAW AS  
COUNSEL FOR DEFENDANT  
CREATE NEW TECHNOLOGY (HK)  
CO. LTD.

DATE: June 29, 2015  
TIME: 10:00 AM  
PLACE: Courtroom 780

1 **A. INTRODUCTION**

2  
3 There is good cause under the Local Rules for counsel to withdraw from  
4 representation of Create New Technology (HK) Co. Ltd. ("Create"). *First*, Create  
5 has consented to the withdrawal, and *second*, Create has refused to participate in  
6 upcoming Court deadlines. In addition, counsel has complied with the requirements  
7 of the Local Rules in seeking withdrawal.

8 **B. STATEMENT OF FACTS**

9 Plaintiffs China Central Television, China International Communications,  
10 Co., Ltd., TVB Holdings (USA), Inc., and DISH Network, L.L.C. (collectively  
11 "Plaintiffs") filed this action on March 13, 2015. On April 8, counsel for Create  
12 (Harry A. Zinn and Lester F. Aponte with the law firm Young, Zinn & Bate LLP),  
13 made appearances to file a stipulation extending the time for Create to answer or  
14 otherwise respond to April 22. Create is also represented by attorneys at Morris,  
15 Manning & Martin LLP, who due to the issues raised herein, decided not to file  
16 motions for admission *pro hac vice* (collectively, with Harry A. Zinn and Lester F.  
17 Aponte, "U.S. counsel").

18 In this case and the related case *Munhwa Broadcasting Corp. v. Create New*  
19 *Technology (HK) Co. Ltd.*, CV14-4213-RGK-RZx (C.D. Cal.)<sup>1</sup>, with the exception  
20 of one direct call with Create, U.S. counsel has communicated with Create through  
21 an independent, intermediary local China counsel Annie Ma, with the law firm of  
22 King & Future IP Consultancy Limited, in Shenzhen, PRC ("China counsel").  
23 (Warlick Decl. ¶2.) U.S. counsel has repeatedly requested more direct  
24 communication, but Create has declined. (*Id.*) Notwithstanding this added  
25 complexity imposed by Create's decision, China counsel was diligent and faithful in  
26 her role as intermediary by all appearances.

27  
28 <sup>1</sup> On April 17, Create filed a similar motion to withdraw in the related *Munhwa Broadcasting* case.  
(CV14-4213 Doc. No. 174.)

On Friday, April 10, 2015, Create directed its U.S. counsel to cease work on this matter, terminated the undersigned counsel's representation of Create, and consented to this motion to withdraw. (*See* Warlick Decl. ¶3, Ex. 1.) In response to Create's direction to cease work, U.S. counsel gave written notice to Create, through China counsel, of the consequences of its inability to proceed *pro se*. (*Id.* ¶4.) U.S. counsel also informed Create, through China counsel, of the consequences of Create's directive to cease all work in this matter. (*Id.* ¶5.) In addition, on April 13, 2015, Create's China counsel confirmed that Create will not file an answer or otherwise respond on April 22 and will not respond to Plaintiffs' motion for preliminary injunction. (*Id.* ¶6.)

U.S. counsel has had difficulty in communicating with Create about its discovery obligations in a related case, *Munhwa Broadcasting Corp. v. Create New Technology (HK) Co. Ltd.*, CV14-4213-RGK-RZx (C.D. Cal.). For example, in response to written discovery requests served by plaintiffs on February 17, 2015, U.S. counsel sent a memorandum to Create, through China counsel, summarizing and explaining the written discovery requests, and asking the China counsel to assist in collecting information and documents. (*Id.* at ¶7, 8.) Over the next few weeks, U.S. counsel made repeated efforts to supervise Create and China counsel in complying with plaintiffs' discovery requests. (*Id.* at ¶9, 10.) Nonetheless, Create did not provide certain documents and information requested by U.S. counsel, or adequately explain why the documents and information were not provided, despite repeated efforts by U.S. counsel to obtain the documents and an explanation. (*Id.* at ¶10.)

U.S. counsel also had difficulty communicating with Create regarding the deposition of Mr. Wenwei Zhang in the *Munhwa Broadcasting* case. Weeks before the deposition, Create, through China counsel, confirmed that Mr. Zhang would apply for a U.S. visa to attend depositions in Atlanta on April 1 and 2, 2015. (*Id.* ¶11.) U.S. counsel reminded Create, through China counsel, of the deposition

several times. (*Id.*) On March 30, two days before the deposition, Create, through China counsel, informed U.S. counsel for the first time that Mr. Zhang's U.S. visa application had not been granted. (*Id.*) U.S. counsel immediately informed Plaintiffs and the deposition was postponed. (*Id.*)

On Thursday, April 9, *Munhwa Broadcasting* plaintiffs filed an *Ex Parte* Application to compel discovery, including the deposition of Mr. Zhang. (CV14-4213, Doc. No. 165.) Magistrate Judge Zarefsky granted the *Ex Parte* Application, on April 13, 2015, compelling certain discovery by April 15. (CV14-4213, Doc. No. 170.) U.S. Counsel, through China counsel, provided Create with a copy and an explanation of this order, but Create has declined to provide any of the ordered discovery or otherwise provide any information for U.S. Counsel to respond. (*See* Warlick Decl. ¶12, 13.)

U.S. counsel will continue to provide notice of Court filings to Create. (*Id.* ¶13.) Once U.S. counsel withdraws, the best contact for Create is: Room D, 10/F, Tower A, Billion Centre, 1 Wang Kwong Road, Kowloon Bay, Kowloon, Hong Kong. (Warlick Decl. ¶14.)

### C. LEGAL ARGUMENT

There is good cause for the withdrawal of U.S. counsel because Create consents. *See* L.R. 83-2.3.2, 83-2.3.5; *see Stafford v. Mesnik*, 63 F.3d 1445, 1449 (7th Cir. 1995) (noting a "letter to the court confirm[ing] that [the client] had asked [counsel] to stop efforts in his defense"). There is also good cause under the Rules of Professional Conduct of the State Bar of California because of Create's refusal to participate in this litigation. *See* Rule 3-700(C)(1)(d) (allowing permissive withdrawal where the client: "by other conduct renders it unreasonably difficult for the member to carry out the employment effectively.")

As discussed above, following repeated attempts by U.S. counsel to have Create comply with its discovery obligations in the *Munhwa Broadcasting* case and

1 hampered by Create's refusal to communicate with U.S. counsel directly, but instead  
 2 through Create's China counsel, on Friday, April 10, 2015, Create directed its U.S.  
 3 counsel to cease work on this matter, terminated the undersigned counsel's  
 4 representation of Create, and consented to this motion to withdraw. (*See* Warlick  
 5 Decl. ¶3, Ex. 1.) The Director of Create, Zhang Wenwei, signed a written consent  
 6 and approval of this motion. (*Id.*) In accordance with L.R. 83-2.3.4, Create has  
 7 been instructed that it may not proceed *pro se*, and has been given written notice of  
 8 the consequences of its inability to appear *pro se*. (*Id.*)

9       Additionally, the withdrawal will not cause any delay or prejudice to  
 10 Plaintiffs. Create has instructed U.S. Counsel to cease all substantive work in this  
 11 matter. (*See* Warlick Decl. ¶3, Ex. 1.) Through China counsel, Create has stated  
 12 that it will not file an answer or otherwise respond on April 22 and will not respond  
 13 to Plaintiffs' motion for preliminary injunction. (*See* Warlick Decl. ¶6.) For  
 14 example, in the *Munhwa Broadcasting* case, after Magistrate Judge Zarefsky  
 15 granted the *Ex Parte* Application, compelling certain discovery by April 15, (Doc.  
 16 No. 170), U.S. Counsel provided a copy of the order and an explanation to Create's  
 17 China counsel. (*Id.* ¶12, 13.) However, Create has not provided any of the ordered  
 18 discovery or otherwise provided any information for U.S. Counsel to respond. (*Id.*  
 19 ¶13) Thus, in light of Create's refusal to participate further, there is no prejudice to  
 20 Plaintiffs by undersigned counsel's withdrawal because the undersigned counsel  
 21 cannot obtain Create's participation in the litigation. The undersigned counsel's  
 22 presence (or absence) will have absolutely no impact on any possible delay or  
 23 prejudice.

24       Finally, withdrawal is warranted under the Rules of Professional Conduct of  
 25 the State Bar of California based on Create's refusal to respond to upcoming  
 26 deadlines, and U.S. counsel's inability to effectively communicate with Create. *See*  
 27 Rule 3-700(C)(1)(d); *see also* *Leatt Corp. v. Innovative Safety Tech., LLC*, No. 09-  
 28 CV-1301, 2010 WL 444708, at \*2 (S.D. Cal. Feb. 2, 2010) (citing Rule 3-

700(C)(1)(d), the Court allowed counsel to withdraw where the client “indicated that it will no longer participate in the litigation”); *U.A. Local 342 Joint Labor–Management Committee v. South City Refrigeration, Inc.*, 2010 WL 1293522, \* 3 (N.D. Cal. Mar. 31, 2010) (finding good cause to withdraw based on, among other things, the client’s “fail[ure] to cooperate”); *Lewis v. Nevada County*, 2009 WL 463510, \*1 (E.D. Cal. Feb. 23, 2009) (allowing withdrawal based on client’s failure to cooperate and heed counsel’s advice).

In accordance with L.R. 83-2.3.3, U.S. counsel has provided notice of this motion to all parties in this action that have made an appearance. On April 9, 2015, U.S. counsel sent an email regarding the substance of this motion to counsel for Plaintiffs. On April 13, 2015, Mr. Jeff Lee, Esq., made an appearance on behalf of HongHui Chen. On April 14, 2015, U.S. counsel sent an email regarding the substance of this motion to Mr. Jeff Lee, Esq. No other party has made an appearance as of the filing of this motion.

#### **D. CONCLUSION**

Accordingly, Harry A. Zinn and Lester F. Aponte with Young, Zinn & Bate LLP respectfully request that this Court grant the motion to withdraw as counsel for Create.

DATED: April 17, 2015

By: /s/ Lester F. Aponte

Harry A. Zinn

Lester F. Aponte

YOUNG, ZINN & BATE LLP

Attorneys for Defendant

CREATE NEW TECHNOLOGY (HK)  
CO. LTD.



**PROOF OF SERVICE**

I am a citizen of the United States and employed in Los Angeles County, California. I am over the age of 18 and not a party to the within action. My business address is 888 S. Figueroa Street, 15<sup>th</sup> Floor, Los Angeles, California 90017.

On April 17, 2015, I hereby certify that I electronically filed the foregoing document described as **MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION TO WITHDRAW AS COUNSEL FOR DEFENDANT CREATE NEW TECHNOLOGY (HK) CO. LTD.** with the Clerk of the Court for the United States District Court, Central District of California. Participants in the case who are registered users will be served by the CM/ECF system, electronically transmitted on the following interested parties in this action at the emails addressed below:

Carla A. McCauley, Esq.  
DAVIS WRIGHT TREMAINE LLP  
865 So. Figueroa Street  
24<sup>th</sup> Floor  
Los Angeles, CA 90017  
Tel: (213) 633-6800  
Fax: (213) 633-6899  
Email: [carlamccauley@dwt.com](mailto:carlamccauley@dwt.com)

Jen-Feng Lee  
LT PACIFIC LAW GROUP LLP  
17800 Castleton Street, #560  
City of Industry, CA 91748  
Tel: (626) 810-7200  
Fax: (626) 810-7300  
Email: [jflee@ltpacificlaw.com](mailto:jflee@ltpacificlaw.com)

I declare that I am employed in the office of a member of the bar of this court at whose direction the service was made.

Executed on April 17, 2015, at Los Angeles, California.

  
Patty Flores